

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214081.2

DATE: November 19, 1984

MATTER OF: McCotter Motors, Inc.

DIGEST:

1. Award to offeror who did not propose to place a "computer on site" as specifically required by the RFP was improper, since the basis for an award must be the same, in its material terms, as that on which the competition is conducted.
2. Where a solicitation contained an ambiguity that caused offerors to compete on an unequal basis, and it is uncertain which offeror, absent the ambiguity, would have been low, award under the solicitation was improper.

McCotter Motors, Inc. protests the award of a contract to Wheeler Brothers, Inc. under request for proposals (RFP) No. DLA700-84-R-0620, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency (DLA), for a contractor-operated parts depot (COPAD) at Defense Depot, Mechanicsburg, Pennsylvania. McCotter principally contends that offerors were not afforded the opportunity to compete on an equal basis. We sustain the protest.

The solicitation required, among other things, that the successful contractor have the capability to process orders for needed parts electronically. McCotter, the incumbent contractor, electronically processed orders during the entire 3-year term of its prior contract with a computer (mainframe) that was physically located at the site of the government facility. The current solicitation, issued November 18, 1983, contained the following provision (SP-6), the interpretation of which is at issue:

"a. In addition to the capability to manually process orders as described above, the Contractor will have a computer on site

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with the capability for telecommunications interface support with BISYNC batch communication.

(1) The interface will be established during the Phase-In Period. . . . This interface will have the following capabilities:

(a) Receive orders in electronic format and to print the order . . . at the Government furnished facility. . . .

(b) The capability to provide the CAO [Contract Administration Office] in electronic format the acceptance of orders. . . .

(c) The capability to provide invoices in electronic format to the CAO and the Office of the Comptroller at DCSC. . . . " (Emphasis added.)

McCotter interpreted this provision as requiring a computer (mainframe) on-site and submitted its cost proposal accordingly. After the agency awarded the contract to Wheeler, McCotter discovered that Wheeler did not intend to locate its computer on-site but rather would locate it at its home business office in Somerset, Pennsylvania, with only peripheral equipment such as printers and terminals to be located at the depot.

McCotter then protested to the contracting officer. In response, the contracting officer, by letter of June 4, 1984, stated: 1) that he recognized that SP-6 required a computer on-site with a capability for telecommunications support; 2) that Wheeler's offer did not literally comply with the requirement; and 3) that it was nevertheless determined that Wheeler's proposal met the minimum needs of the government. The contracting officer further stated that an amendment to the solicitation should have been issued, but that the matter was never raised by any offeror so that the need for an amendment was overlooked even though the government knew prior to award that Wheeler would not locate its computer on-site.

The agency has since repudiated this initial position of the contracting officer, and now maintains that

McCotter's interpretation of the solicitation provision is overly literal. The agency argues that SP-6 expressed only a performance requirement for telecommunications support, and not a requirement for an on-site computer. The agency stresses that the crux of the provision is to require computer capability, rather than the specification of the physical location of the computer. Finally, the agency argues that a computer on-site is not essential to its minimum needs and that any contrary interpretation therefore would be unduly restrictive.

We find the agency's position untenable. The plain language of the solicitation specified a "computer on-site," which we read to require physical location at the installation. Since Wheeler did not offer to meet that requirement, the firm was not legally entitled to the contract--the basis for an award must be the same, in its material terms, as that on which the competition is conducted. See CDI Corp., B-209723, May 10, 1983, 83-1 CPD ¶ 496.

Moreover, even if we accept the agency's interpretation of the overall thrust of the specification language as reasonable, we believe that it was at least as reasonable for McCotter to interpret the solicitation specification for a "computer on-site" to require location of the mainframe at the installation. It is a basic principle of federal procurement law that specifications must be sufficiently definite and free from ambiguity so as to permit competition on a common basis. Delta Data Systems Corp., B-213396, Apr. 17, 1984, 84-1 CPD ¶ 430. Since the solicitation requirement here is at best ambiguous, with the result that offerors responded to DLA's requirement based on different, reasonable assumptions as to what that requirement was, the competition was conducted on an unequal basis. See Amdahl Corp., et al., B-212018, et al., July 1, 1983, 83-2 CPD ¶ 51.

The agency also argues that McCotter has not met its burden of showing prejudice in the competition since the difference in price between Wheeler and McCotter was more than \$300,000 (the contract price is \$9,567,290) which, the agency argues, suggests that the ambiguity did not have great impact on the ultimate selection decision. In response, McCotter has submitted a detailed cost breakdown indicating that it could have eliminated 23 employee positions by using home office staff if the computer could have been located off the facility. McCotter has also identified tax advantages (corporate income and various

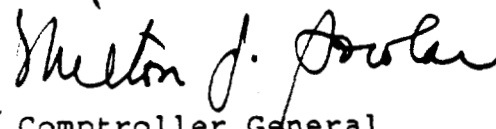
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employee taxes) between performing the work at its Florida office and at the government facility in Pennsylvania. McCotter states that the total savings would have exceeded \$300,000, and argues that it should not be required to prove definitely what it would have proposed had the agency's actual intent been apparent to it during the procurement. We agree. Where a solicitation defect causes offerors to compete on an unequal basis, the unsuccessful offeror does not have to establish that, but for the defect, it definitely would have been low. See Contact International, Inc.--Request for Reconsideration, B-210082.2, Sept. 2, 1983, 83-2 CPD ¶ 294. Rather, if the record, as here, indicates that the unsuccessful offeror might have been unfairly displaced, prejudice has been shown. Id.

We thus believe the competition was conducted improperly. The only remaining question involves the choice of corrective action. We note that McCotter's protest, although timely, was filed several months after the March 1984 award of the contract to Wheeler; that the initial term of Wheeler's contract expires June 30, 1985; and that Wheeler's contract contains an option to extend the contract performance period for a maximum of 3 years, 11 months. Moreover, the contracting parties have estimated the cost of terminating Wheeler's contract to be substantial. In these circumstances, we believe the most appropriate corrective action would be, as requested by the protester, for the agency to refrain from exercising any options under Wheeler's contract and to resolicit the requirement at the end of the contract's initial term. We are so recommending to the Director of DLA.

Since this decision contains a recommendation that corrective action be taken, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

The protest is sustained.

for 
Comptroller General
of the United States